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10 as Trustee of SORESENSEN RESEARCH AND  
11 DEVELOPMENT TRUST

12 UNITED STATES DISTRICT COURT  
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 JENS ERIK SORESENSEN, as Trustee of  
15 SORESENSEN RESEARCH AND  
16 DEVELOPMENT TRUST,

17 Plaintiff,

18 v.

19 GLOBAL MACHINERY COMPANY,  
20 an Australian company; GMCA PTY.  
21 LTD., an Australian company;  
22 TRAPONE CORPORATION PTY.  
23 LTD., an Australian company; and DOES  
24 1 – 100,

25 Defendants.

) Case No. 08 CV 233 BTM CAB

)

) **OPPOSITION TO DEFENDANTS'**

) **MOTION TO STAY PENDING**

) **OUTCOME OF REEXAMINATION**

) **PROCEEDINGS**

)

) Date: April 25, 2008

) Time: 11:00 a.m.

) Courtroom 15 – 5<sup>th</sup> Floor

) The Hon. Barry T. Moskowitz

)

) *NO ORAL ARGUMENT*

) *UNLESS REQUESTED BY THE COURT*

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## SUMMARY OF OPPOSITION

The Court should deny Defendants' Motion for Stay on the grounds of a pending patent reexamination because (1) such a stay would most likely extend five years or more, creating a substantial likelihood of prejudice to Plaintiff; and (2) the delay would prevent identification of any other proper defendants, who might then escape liability due to the passage of time.

Defendants' GLOBAL MACHINERY COMPANY, GMCA PTY. LTD., and TRAPONE CORPORATION PTY. LTD., (collectively, "Defendants") Motion for Stay (Docket # 9) is largely duplicative of the motions for stay in several related cases<sup>1</sup>, and Plaintiff's general arguments against the propriety of a stay in those cases is applicable here and thus incorporated by reference<sup>2</sup>. However, this Opposition contains data and details first described in case no. 07-CV-02321 (the "Energizer case") that entirely change the landscape of the issue of stay requests on the '184 patent cases.

Since the filing of the first few related oppositions to motions for stay, Plaintiff has learned that the approximate duration of patent reexaminations has dramatically increased in recent years from an average of 18-23 months as cited in prior arguments to the Court, to a duration likely to be closer to five years than to two years.

Because of this new data, a litigation stay pending reexamination completely undermines the entire original purpose of the reexamination process – to allow a prompt forum for review of the validity of a patent. It also undermines the intent and purpose of the Local Patent Rules for streamlined patent litigation.

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<sup>1</sup> *Sorensen v. Black & Decker Corporation, et al*, Case No. 06-cv-1572, *Sorensen v. Giant International, et al*, Case No. 07-cv-02121, and *Sorensen v. Helen of Troy, et al*, Case No. 07-cv-02278

<sup>2</sup> See *Request for Judicial Notice* for docket numbers.

1 The required balancing of the parties' interests weighs in favor of only a  
 2 partial stay of proceedings, if that. The partial stay should allow initial discovery  
 3 and motion practice to continue.

#### 4 5 **FACTUAL SUMMARY**

6 *Procedural Posture.* This action for patent infringement was filed February 5,  
 7 2008. On March 18, 2008, Defendants filed the pending Motion for Stay.

8 Recent other filings of '184 patent infringement cases bring the total number  
 9 of cases pending before this Court to 24.

10 *Status of '184 Patent Reexaminations.* Patent infringement defendant Black &  
 11 Decker filed an Ex Parte Request for Reexamination of the subject '184 patent in  
 12 July 2007 ("1<sup>st</sup> reexamination") and, on that basis, obtained an order staying the  
 13 related case, *Sorensen v. Black & Decker Corporation, et al.*, Case No. 06cv1572  
 14 ("Black & Decker Order"). Now, nine months later, no first office action for the 1<sup>st</sup>  
 15 reexamination has yet issued, even though Plaintiff declined to file the optional  
 16 patent owner's statement, thereby denying Black & Decker the ability to file more  
 17 documents with the USPTO, in order to shave approximately two months from the  
 18 process. *Kramer Decl.* ¶ 4.

19 Co-defendants in the Black & Decker case - Phillips Plastics and Hi-Tech  
 20 Plastics – waited until December 21, 2007 to file a second third-party reexamination  
 21 request ("2<sup>nd</sup> reexamination"), which the USPTO has just recently accepted. *Kramer*  
 22 *Decl.* ¶ 5.

23 Closer analysis of USPTO data show that the current, average timeframe for  
 24 conclusion of a reexamination is approximately five years, extending longer if an  
 25 appeal to the Federal Circuit is sought. *Kramer Decl.* ¶ 6.

## ARGUMENT

“A court is under no obligation to delay its own proceedings by yielding to ongoing PTO patent reexaminations, regardless of their relevancy to infringement claims which the court must analyze. [cites omitted]” *Fresenius Medical Care Holdings, Inc. v. Baxter International, Inc.* 2007 WL 1655625 (N.D. Cal. 2007).

“There is no *per se* rule that patent cases should be stayed pending reexaminations, because such a rule ‘would invite parties to unilaterally derail’ litigation.” *Soverain Software LLC v. Amazon.Com, Inc.* 356 F.Supp.2d 660, 662 (E.D.Tex.2005), quoted in *Fresenius, supra*.

Defendants are trying to derail this litigation by essentially arguing *per se* entitlement to a stay based upon the *Black & Decker* stay. That argument fails because updated information regarding the average duration of reexaminations challenges the assumptions under which that stay was issued and warrant a closer examination by the Court.

### I. DEFENDANTS’ REQUEST FOR STAY SHOULD BE DENIED AS THE FACTS ARE DISTINGUISHABLE FROM THE *BLACK & DECKER* CASE.

The court is not required to stay judicial resolution of a patent case in view of reexaminations, rather the decision to stay is within the discretion of the Court. *Viskase Corp. v. American Nat. Can Co.*, 261 F.3d 1316, 1328 (Fed. Cir. 2001).

A court must weigh the parties competing interests as presented by the specific facts of the case at bar. *Jain v. Trimas Corp.*, 2005 WL 2397041, at \*1 (E.D. Cal. Sept. 27, 2005) (emphasis added).

This motion is materially different from the Black & Decker situation upon request for stay in at least two respects: (1) the Court now has more accurate information regarding the expected duration of reexamination proceedings; and (2) there was no extensive delay between initial contact by the Plaintiff and filing of this suit.

1 Issuance of a stay that will likely extend approximately five years, longer than  
2 the time that the parties have even been in communication, is excessive.

3 II. PLAINTIFF WOULD BE UNDULY PREJUDICED AND TACTICALLY  
4 DISADVANTAGED BY A STAY.

5  
6 A new analysis based on USPTO statistical data shows that the likely duration  
7 of an *ex parte* reexamination proceeding is closer to five years, not two. Such a  
8 lengthy stay undermines the congressional intent for implementation of the  
9 reexamination process, and also undermines the Local Patent Rules. Furthermore,  
10 this extensive delay would prejudice the Plaintiff through inability to identify and  
11 serve all appropriate defendants and inability to locate and preserve necessary  
12 evidence and record witness testimony.

13 Thus, Plaintiff would be unduly prejudiced and subjected to a clear tactical  
14 disadvantage by a complete stay of this case pending completion of two *ex parte*  
15 reexamination proceedings before the USPTO.

16 A. Ex Parte Reexaminations Can Be Expected to Extend for Five Years or  
17 More, Rather than 18-23 Months.

18 Defendants' Motion for Stay relies on this Court's order to stay the related  
19 '184 patent infringement case against Black & Decker. The Black & Decker Order  
20 was based on statistical data from the USPTO's office that has since been shown to  
21 be obsolete, in that it reflects an average of all reexamination activity since 1981, and  
22 ignores the huge increase in reexamination backlog that has occurred over the past  
23 six years.

24 1. *A closer look at USPTO data shows the current length of*  
25 *reexamination proceedings to be far longer than 23 months.*

26 In the Black & Decker motion for stay, the moving parties pointed to a June  
27 2006 statistical report from the USPTO that listed average pendency of  
28



1 reexaminations to be 22.8 months, and median pendency to be 17.6 months<sup>3</sup> (“2006  
2 Report”). This was a material factor in the Court’s decision to stay that case.<sup>4</sup>  
3 However, closer examination of the USPTO’s raw data shows a remarkably  
4 different picture of the duration of reexaminations than the 2006 Report suggests.

5 The 2006 Report is based upon averages over the entire 28 year course of the  
6 existence of reexamination proceedings, since 1981. What it does not show, is the  
7 dramatic increase in filings relative to the number of certificates issued (which signal  
8 the end of the reexamination proceeding) over the past few years.

9 USPTO Annual Reports contain statistics on the number of *ex parte*  
10 reexamination filings, the number of those that are known to be related to litigation,  
11 the number of *ex parte* reexaminations granted, and the total number of certificates  
12 issued. The official website contains annual reports back to 1993 which contain this  
13 statistical data back to 1989. *Kramer Decl.* ¶ 7, Exhibit A.

14 By comparing the incoming reexamination filings vs. the outgoing certificates,  
15 a pattern of dramatically increasing backlog appears. Assuming a zero carryover  
16 from 1988 into the 1989 figures for which records are available, the backload of *ex*  
17 *parte* reexaminations has increased 100-fold from 1989 to the end of 2007 (from 16  
18 to an estimated 1,658). *Kramer Decl.* ¶ 8, Exhibit B.

19 If the PTO were able to keep issuing certificates at the rate of the highest  
20 number of reexamination certificates ever issued in a single year, 367, and have zero  
21 new filings, it would still take approximately 4.5 years for the PTO to erase the  
22 backload of *ex parte* reexaminations. *Kramer Decl.* ¶ 9. If the rate of certificate  
23

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24  
25 <sup>3</sup> See *Judicial Notice*, Docket #180, Exhibit B, from *Black & Decker* case.

26 <sup>4</sup> See *Judicial Notice*, Docket #243, page 7:19-22, in the *Black & Decker* case: “An  
27 average delay for reexamination of approximately 18-23 months is especially  
28 inconsequential where Plaintiff himself waited as many as twelve years before bringing the  
present action. (See PTO Reexamination Statistics at Ex. B to Niro Decl.; Doc. #180-3.)”

1 issuances were at the average for the past five years (250), it would take 6.6 years to  
 2 erase that same backlog. *Kramer Decl.* ¶ 10.

3 The impact of this newly analyzed USPTO data extends beyond the realization  
 4 that reexaminations are extending for longer and longer periods of time. Five-plus  
 5 year long reexaminations (1) undermine the legislative policy underlying creation of  
 6 the reexamination process in the first place; and (2) undermine this District's efforts  
 7 to streamline and expedite intellectual property cases through newly implemented  
 8 Local Patent Rules; and (3) render older case law on the subject of litigation stays  
 9 pending reexamination inapplicable.

10 2. *Five-plus year reexaminations undermine congressional intent*  
 11 *for use of the reexamination process.*

12 The express congressional intention was that reexamination should "provide a  
 13 useful and necessary alternative for challengers and patent owners to test the validity  
 14 of United States patents in an efficient and relatively inexpensive manner." H.R.  
 15 REP. No. 96-1307 pt. 1, at 4 (1980), *reprinted in* 1980 U.S.C.C.A.N. 6460-6463.

16 All reexamination proceedings under this section, including any appeal to the  
 17 Board of Patent Appeals and Interferences, are to be conducted with "special  
 18 dispatch." 35 U.S.C. § 305.

19 As demonstrated above, efficiency and "special dispatch" have not proven to  
 20 be the case in recent years. To the contrary, the filing of reexaminations has become  
 21 an effective weapon to slow down or stop patent infringement plaintiffs. This is not  
 22 only demonstrated by numerous articles recommending this strategy to infringement  
 23 defendants,<sup>5</sup> but it is also demonstrated by the USPTO's own information. *Kramer*  
 24 *Decl.* ¶ 11.

25 The USPTO was already commenting on problems keeping pace with these  
 26 increased litigation related filings in 2004, even though the estimated backlog was

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27  
 28 <sup>5</sup> See *Kramer Decl.* Exhibit D.

1 still less than 800 at the end of 2003. *Kramer Decl.* ¶ 12. In fact, the frequent use of  
2 multiple reexamination requests by litigants to further delay of the litigation fueled a  
3 PTO rule change in 2004 changing the standard of review for second or subsequent  
4 reexamination requests.

5 These statistics are not a disparagement of the PTO's efforts. It is a  
6 recognition that the recent increase in reexamination filings have overwhelmed the  
7 staffing and capabilities of the PTO. The increase has made the statutory mandate of  
8 "special dispatch" meaningless phrase.

9 *Ex parte* reexamination requests known to be related to litigation have soared  
10 from a mere 9% in 1990 to 57% for 2007. In fact, the frequent use of multiple  
11 reexamination requests fueled a USPTO rule change in 2004 changing the standard  
12 of review for second or subsequent reexamination requests.

13 The "Notice of Changes in Requirement" document (see *Kramer Decl.* ¶ 13,  
14 Exhibit C) made the following statement in the Background section:

15  
16 It has been the Office's experience, however, that both patent owners  
17 and third party requesters have used a second or subsequent  
18 reexamination request . . . to prolong the reexamination proceeding, and  
19 in some instances, to turn it essentially into an inter partes proceeding.  
20 These actions by patent owners and third party requesters have resulted  
21 in multiple reexaminations taking years to conclude, thus making it  
22 extremely difficult for the Office to conclude reexamination  
23 proceedings with "special dispatch" as required by statute (35 U.S.C.  
24 305 for ex parte reexamination, 35 U.S.C. 314 inter partes  
25 reexamination).

26 If the USPTO was having problems completing reexaminations with "special  
27 dispatch" in 2004, the sheer volume of increased filings since then demonstrate an  
28 even larger problem now. This turns what was intended to be an efficient, timely  
process into an almost guaranteed strategy for delay in patent litigation.

1                   3.     *Lengthy reexamination proceedings also undermine the intent of*  
 2                   *the Local Patent Rules.*

3             In late 2006, this Court adopted and implemented a set of Patent Local Rules  
 4 with the stated purpose of providing a predictable and uniform treatment for IP  
 5 litigants and streamline the process by which a patent case is litigated, shortening the  
 6 time to trial or settlement and thereby reducing costs for all parties involved. The  
 7 new rules set up a schedule where a claim construction hearing would be held  
 8 approximately nine months after the complaint is filed, and trials set at  
 9 approximately 18 months after complaints are filed. *Kramer Decl.* ¶ 14.

10            Judge Dana M. Sabraw, who chaired the committee that established the new  
 11 patent local rules, said: “A majority of the judges of the Southern District are firmly  
 12 committed to holding claim construction hearings within nine months for the filing  
 13 of the complaint, and to setting a trial date within 18 months of that filing.” *Kramer*  
 14 *Decl.* ¶ 15, Exhibit D.

15            None of these purposes and intents can be met when an infringement  
 16 defendant can file an *ex parte* reexamination request and receive an almost automatic  
 17 multi-year exception from the timeline set out in the Local Rules.

18            While district judges are working to streamline and expedite patent cases, the  
 19 USPTO’s statutorily-required “special dispatch” procedure has been getting slower  
 20 and slower.

21            The net effect in this case and the related ‘184 infringement cases is that two  
 22 carefully timed *ex parte* reexamination have been relied upon to deny Plaintiff the  
 23 ability to enforce its valid patent.

24                   4.     *Caselaw supporting liberal grants of litigation stays pending the*  
 25                   *completion of reexamination proceedings are inapposite.*

26            It is no surprise that so many *ex parte* reexamination requests are flooding the  
 27 USPTO. These filings have become an oft-used weapon by patent infringement  
 28 defendants because litigation stays are routinely granted pending conclusion of

1 reexamination. In 1990, the percentage of *ex parte* filings that were known to be  
2 related to litigation was a mere nine percent (9%). By 2007, after a host of  
3 publications had pushed reexamination as a litigation strategy for defendants, the  
4 percentage had increased more than six-fold to 57%.

5 The *Black & Decker* Order was based on legal opinions that either predated  
6 the recent dramatic increase in filings and consequent backlog of cases, or opinions  
7 that relied on that same outdated factual scenario.

8 The issue in the *Ethicon* case was whether the PTO could stay a reexamination  
9 pending completion of a court case, not the other way around. The *Ethicon* court did  
10 cite *Gould v. Control Laser Corporation*, 705 F.2d at 1342, 217 USPQ at 986, for  
11 the proposition that the court had authority to order a stay pending conclusion of a  
12 PTO reexamination. What the *Gould* decision actually said was that “power already  
13 resides with the Court to prevent costly pretrial maneuvering which attempts to  
14 *circumvent* the reexamination procedure.” (emphasis in original). Plaintiff has done  
15 nothing here or in related cases trying to circumvent the reexamination procedure.

16 The “‘liberal policy’ in favor of granting motions to stay pending the outcome  
17 of PTO reexamination proceedings” (Docket #243, page 5:19-21) came from the  
18 1994 case of *ASCII Corp. v. STD Entertainment USA, Inc.*, 844 F.Supp. 1378, 1381  
19 (N.D. Cal. 1994). A close look at that decision reveals a statement by the court that  
20 “it is clear from the cases cited by the parties that there is a liberal policy of granting  
21 stays pending reexamination,” but does not directly cite to any particular case.  
22 Furthermore, even if the Court had evaluated the approximately length of  
23 reexamination proceedings in 1994 (there is no indication that it did), it would have  
24 shown that the USPTO was effectively handling its caseload, issuing almost as many  
25 certificates in a year as new requests that were being accepted. A liberal policy of  
26 granting motions to stay pending the outcome of reexamination proceedings was  
27 fully appropriate in 1994. That is no longer the case.

1           *Photoflex Products, Inc. v. Circa 3 LLC*, No. C 04-03715 JSW, 2006 U.S.  
2 Dist. LEXIS 37743, at \*2-3 (N.D.Cal. May 24, 2006), also relies on the  
3 misconstrued *Gould* case, and the outdated *ASCII* case, as did the other cases.

4           None of the cases cited in the *Black & Decker* order appear to give any  
5 consideration whatsoever to the relative length of time that the reexamination will  
6 take. In more recent cases, however, Courts are beginning to acknowledge the  
7 extended duration of reexamination proceedings and are exercising their inherent  
8 authority to not stay proceedings pending reexaminations that can take years to  
9 complete.

10           A court is under no obligation to delay its own proceedings by yielding  
11 to ongoing PTO patent reexaminations, regardless of their relevancy to  
12 infringement claims which the court must analyze. *See id.* (“The  
13 [district] court is not required to stay judicial resolution in view of the  
14 [PTO] reexaminations.”); *see also Medichem, S.A. v. Rolabo, S.L.*, 353  
15 F.3d 928, 936 (Fed.Cir.2003) (“[O]n remand, a stay of proceedings in  
16 the district court pending the outcome of the parallel proceedings in the  
17 PTO remains an option within the district court's discretion.”) (stated in  
the context of reissue proceedings for interfering patents before the  
Board of Patent Appeals and Interferences); *Patlex Corp. v.*  
*Mossinghoff*, 758 F.2d 594, 602-03 (Fed.Cir.1985) (recognizing judicial  
discretion in stay determinations for patent proceedings).

18           *NTP, Inc. v. Research in Motion, Ltd.*, 397 F.Supp.2d 785, 787 (E.D.Va.2005).  
19 (2005).

20           The *NTP* court was adamant that it was not going to stay litigation based upon  
21 the moving party's speculation that that patent would be invalidated shortly.

22  
23           The likely duration and result of the PTO's reexamination proceedings  
24 and any subsequent (and likely) appeals are in dispute. RIM, turning a  
25 blind eye to the many steps that must still be taken before a final  
26 determination can be issued by the PTO and confirmed, suggests that  
27 the patents-in-suit will be invalidated in a matter of *months*. NTP, on the  
28 other hand, insists on the likelihood of the opposite result and gives a  
reality-based estimated time frame of *years*. Regardless of which party's  
predictions this Court might adopt, any attempt at suggesting a likely  
time frame and outcome of the PTO reexamination process is merely



1 speculation. This Court cannot and will not grant RIM the extraordinary  
2 remedy of delaying these proceedings any further than they already  
3 have been based on conjecture.

4 *Id.*

5 Further, the case of *Blackboard, Inc. v. Desire2Learn, Inc.* Civil Action No.  
6 9:06-CV-155 (E.D. Texas, 2008), recently proceeded to plaintiff's verdict despite *ex*  
7 *parte* and *inter partes* reexaminations that had been ordered 13 months previous in  
8 which no office actions had been issued.

9 Other cases have reaffirmed that district courts are not obligated to issue stays,  
10 including *MercExchange, L.L.C. v. eBay, Inc.*, 500 F.Supp.2d 556, 562, 83  
11 U.S.P.Q.2d 1688 (E.D.Va. Jul 27, 2007).

12 Because the re-analyzed USPTO data show that the 1<sup>st</sup> reexamination on the  
13 '184 patent is likely to not be complete for approximately 5 years from its filing, and  
14 because the 2<sup>nd</sup> reexamination has the potential to introduce even further delay in the  
15 completion of reexamination proceedings, a stay pending reexamination by the  
16 USPTO should not be granted.

17 B. Plaintiff Would Be Prejudiced Through The Inability To Identify and  
18 Serve All Proper Defendants.

19 As detailed more fully in the related oppositions to motions for stay, Fed.R.  
20 Civ.P, Rule 15(c), places limitations on a party's ability to amend pleadings to add or  
21 substitute parties, and places restrictions on when such amendments relate back to  
22 the date of the initial filings. Inability to identify responsible parties inhibits the  
23 ability to give those parties notice of the case, thereby increasing the chance that they  
24 will claim prejudice later, and increasing the likelihood that other parties will destroy  
25 or dispose of critical evidence.

26 A complete stay of litigation before any preliminary steps are taken to identify  
27 proper parties and ensure initial discovery or preservation of evidence greatly  
28 prejudices the Plaintiff and may well prejudice the entire judicial process in this case.

C. Plaintiff Would Be Prejudiced Through The Loss Of Evidence.

1           The Federal Rules of Civil Procedure do not expressly impose a duty to  
2 preserve evidence. Courts have construed the federal discovery rules, particularly  
3 Rule 26, to imply a duty to preserve all evidence that may be relevant in a case. *See*  
4 *Danis v. USN Communs, Inc.*, 2000 U.S. Dist. LEXIS 16900 at \*4-5. “The  
5 obligation to preserve arises when the party has notice that the evidence is relevant to  
6 litigation -- most commonly when the suit has already been filed, providing the party  
7 responsible for the destruction with express notice, but also on occasion in other  
8 circumstances, as for example when a party should have known that the evidence  
9 may be relevant to future litigation.” *Treppel v. Biovail Corp.*, 233 F.R.D. 363, 371  
10 (2006).

11           If a complete stay is issued, there is no assurance that parties (whether parties  
12 to the suit or otherwise) will have knowledge of any obligation to preserve evidence,  
13 and in the case of third-party suppliers would actually have a disincentive to preserve  
14 evidence.

15           A preservation order protects the producing party by clearly defining the  
16 extent of its preservation obligations. *Id.* at 370. “In the absence of such an order,  
17 that party runs the risk of future sanctions if discoverable information is lost because  
18 [the party] has miscalculated.” *Id.* Further, “[preservation] orders are increasingly  
19 routine in cases involving electronic evidence, such as e-mails and other forms of  
20 electronic communication.” *Id.* at 370. Because the duty of preservation exists  
21 without a court order, some courts are reluctant to grant motions to preserve  
22 evidence. *See Madden v. Wyeth*, 2003 U.S. Dist. LEXIS 6427.

23           Plaintiff needs to have an opportunity to conduct at least preliminary  
24 discovery and request a detailed preservation order, otherwise it will be subjected to  
25 substantial prejudice as a result of a stay.

26           Motions to stay pending patent reexamination have been denied where the  
27 likely length of reexamination will serve to exacerbate the risk of lost evidence. In  
28



1 *Telemac Corp. v. Teledigital, Inc.*, 450 F.Supp.2d 1107, 1111 (N.D.Cal. 2006). That  
2 is very much the situation here.

### 3 CONCLUSION

4 There is no *per se* rule that patent cases should be stayed pending  
5 reexamination. The perception of such a rule has invited parties such as Defendants  
6 to move for stay on the sole grounds that someone else's reexamination request is  
7 pending before the USPTO.

8 A complete stay on all aspects of all '184 patent cases is not appropriate as  
9 this Court has recently confirmed in its orders on Helen of Troy/OXO and Giant's  
10 motions for stay.

11 Plaintiff has now presented the Court will newly analyzed USPTO data that  
12 change the entire framework in which the Court enter stays in the three earliest '184  
13 patent case stays. This warrants a new look and new balance of the equities involved  
14 in staying this and the other '184 lawsuits.

15 Because the new data shows that a litigation stay pending reexamination  
16 completely undermines the entire original purpose of the reexamination process, as  
17 well as the Local Patent Rules, and would act to prejudice the Plaintiff in numerous  
18 respects, the Court should deny the requested stay.

19 RESPECTFULLY SUBMITTED this Thursday, April 10, 2008.

20  
21 JENS ERIK SORENSEN, as Trustee of  
22 SORENSEN RESEARCH AND DEVELOPMENT  
TRUST, Plaintiff

23 /s/ J. Michael Kaler

24  
25 J. Michael Kaler, Esq.  
26 Melody A. Kramer, Esq.  
27 Attorneys for Plaintiff  
28

## PROOF OF SERVICE

I, J. Michael Kaler, declare: I am and was at the time of this service working within in the County of San Diego, California. I am over the age of 18 year and not a party to the within action. My business address is the Kaler Law Offices, 9930 Mesa Rim Road, Suite 200, San Diego, California, 92121.

On Thursday, April 10, 2008, I served the following documents:

**OPPOSITION TO DEFENDANTS' MOTION TO STAY PENDING OUTCOME OF REEXAMINATION PROCEEDINGS**

**DECLARATION OF MELODY A. KRAMER IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION TO STAY PENDING OUTCOME OF REEXAMINATION PROCEEDINGS**

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION TO STAY PENDING OUTCOME OF REEXAMINATION PROCEEDINGS**

PERSON(S) SERVED	PARTY(IES) SERVED	METHOD OF SERVICE
THOMAS W. FERRELL, ESQ. tferrell@higgslaw.com HIGGS, FLETCHER & MACK LLP 401 West "A" Street, Suite 2600 San Diego, CA 92101-7913	Global Machinery Company; GMCA Pty. Ltd; Trapone Corporation Pty Ltd.	Email - Pleadings Filed with the Court via ECF
MARK G. KACHIGIAN mkachigian@hjkllaw.com CASSANDRA L. WILKINSON cwilkinson@hjkllaw.com HEAD, JOHNSON & KACHIGIAN, P.C. 228 West 17th Place Tulsa, Oklahoma 74119	Global Machinery Company; GMCA Pty. Ltd; Trapone Corporation Pty Ltd.	Email - Pleadings Filed with the Court via ECF

- ☐ (Personal Service) I caused to be personally served in a sealed envelope hand-delivered to the office of counsel during regular business hours.
- ☐ (Federal Express) I deposited or caused to be deposited today with Federal Express in a sealed envelope containing a true copy of the foregoing documents with fees fully prepaid addressed to the above noted addressee for overnight delivery.
- ☐ (Facsimile) I caused a true copy of the foregoing documents to be transmitted by facsimile machine to the above noted addressees. The facsimile transmissions were reported as complete and without error.

☐ (Email) I emailed a true copy of the foregoing documents to an email address represented to be the correct email address for the above noted addressee.

☒ (Email--Pleadings Filed with the Court) Pursuant to Local Rules, I electronically filed this document via the CM/ECF system for the United States District Court for the Southern District of California.

☐ (U.S. Mail) I mailed a true copy of the foregoing documents to a mail address represented to be the correct mail address for the above noted addressee.

I declare that the foregoing is true and correct, and that this declaration was executed on Thursday, April 10, 2008, in San Diego, California.

DATED this Thursday, April 10, 2008.

/s/ J. Michael Kaler

J. Michael Kaler